



## COMMUNITY DEVELOPMENT DEPARTMENT

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17575 Peak Avenue Morgan Hill CA 95037 (408) 778-6480 Fax (408) 779-7236  
Website Address: [www.morgan-hill.ca.gov](http://www.morgan-hill.ca.gov)

### PLANNING COMMISSION MEETING MINUTES

#### REGULAR MEETING

SEPTEMBER 27, 2011

PRESENT: Moniz, Mueller, Tanda, Koepp-Baker, Benich, Dommer, McKay

ABSENT: None

LATE: None

STAFF: Assistant City Manager (ACM) Little, Interim Community & Economic Development Administrator (ICEDA) Rowe, Senior Planner (SP) Linder,

Chair Moniz called the meeting to order at 7:00 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

#### **DECLARATION OF POSTING OF AGENDA**

Planning Manager Rowe certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

#### **OPPORTUNITY FOR PUBLIC COMMENT**

Chair Moniz opened the floor to public comment for matters not appearing on the agenda.

Kevin Pfeil appeared regarding Oak Meadow Development and stated that he believed the item would be on the evening's agenda. This project was tabled 4-5 years prior and the owner was directed to work with the neighboring residents. There is no agreement or consensus.

Jim Rowe stated that no application had been received and nothing would be on the agenda for the October 11 meeting, but there would probably be an application submitted before the end of the year.

Moniz closed the floor to public comment.

#### **MINUTES:**

**September 13, 2011** The September 13, 2011 minutes will be included in the October 11, 2011 agenda packet.

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### ORDERS OF THE DAY

No changes.

### WORKSHOP:

#### 1) SANTA CLARA VALLEY HABITAT CONSERVATION PLAN:

The City is participating in the development of the Santa Clara Valley Habitat Conservation Plan (Habitat Plan) to protect local endangered species from impacts arising from private development and public projects while streamlining state and federal Endangered Species Act permit requirements. A Draft Habitat Plan has been prepared under direction of Local Partners, which along with the City includes the cities of San Jose and Gilroy; County of Santa Clara, the Santa Clara Valley Water District and the Valley Transportation Authority (VTA).

Ken Schreiber, the program manager for the Santa Clara Valley Conservation Plan, appeared: The Habitat Plan deals with endangered species. If you have a project that affects endangered species, you must go through a variety of permitting procedures. Probably the most common endangered species is the California Tiger Salamander. There are six partners in the Habitat Plan: City of Morgan Hill, City of Gilroy, City of San Jose, County of Santa Clara, Santa Clara Valley Water District and Valley Transportation Authority (VTA). The federal permitting process is long, complicated and expensive. The Habitat Plan will provide a certainty for developers and help them get around the federal process. It grants a permit for a long period of time for a variety of activities, in exchange for doing a coordinated mitigation and enhancement. A draft plan was distributed in December. It went through a public review process. There were many comments. The plan has been scaled back dramatically since then. The Corps of Engineers has finally agreed to try and incorporate a wetlands impact plan to try to bring the processes together. The Regional Water Boards have also decided to discuss tying their process into this as well. Right now there isn't one jurisdiction in the State of California that can provide a "one-stop" for all of these services. Morgan Hill would be one of the first and that's a very positive economic development.

Benich: So cities like Saratoga and Los Gatos are not part of this Habitat Plan?

Schreiber: That's correct. It would have been extremely difficult to bring all the cities in the county into the plan. Additionally, most of the endangered species are in the southern parts of the county.

Tanda: The Coastal Commission does not reach over to San Jose?

Schreiber: Correct, we are not subject to the Coastal Commission.

Rowe presented his staff report.

McKay: Who would the Joint Powers Authority (JPA) be made up of?

Schreiber: The JPA governing board would be made up of San Jose, Morgan Hill, Gilroy and the county. They will have the authority for the budget and adopting the ordinance. Under that would be an implementing board with the four agencies plus the Water District and Valley Transportation. Under that would be a public

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advisory and technical advisory. Morgan Hill will issue permits for its own jurisdiction.

Moniz: Does that mean we'll need more staff, or use existing?

Rowe: Right now we'll be using existing staff. There will be a trade off of work for staff members, though, because the extensive surveys won't need to be done anymore.

Mueller: We might not have a lot of expertise in all these areas, so we may not have staff capable to implement the program.

Schreiber: Existing staff would have to be familiar with the fee process and the conditions in the Habitat Plan to be applied to the projects. They would not have to be familiar with the ongoing regulations of the state and federal endangered species acts. And if those regulations change, the Habitat Plan does not.

Mueller: How did you get rid of 1/3 of the full time staff for the plan?

Schreiber: We reviewed this position by position. Often we found we could contract out the service or eliminate it.

Koepp-Baker: When we were looking at cutting the budget, what was the amount we showed to be set aside for the plan?

Jim: The original dollar amount to complete the plan was \$93,800. That was approved by Council back in August. To modify and scale back the plan we drew from the portion that was set aside for this year. Gilroy and Morgan Hill are 10 percent partners. The other agencies are 20 percent partners. The amount to complete the plan for Morgan Hill is \$49,375. If the plan is adopted, there is a component of the fees that will be allocated to the partners.

Benich: I think we should approve the plan. We've spent enough money and time. I am concerned that two new agencies have been added because I think it will slow down the approval. I am also really concerned about the 100 percent reduction for public access.

Rowe: We can address that.

Koepp-Baker: I am in favor of this plan, especially now that we've been able to drop some of the costs out. I am also concerned about adding two more agencies, but I think they're critical for cutting the cost of permitting for applicants.

Mueller: First, I have a little bit of concern about the dollar tradeoff that the county is getting for land contributed. Second, we have an area on the map that is shown as agricultural land but it hasn't been used as that for 25 years. We ought to get out of that high end impact fee. Third, I have some concern that the opt-in feature is going to add to impact fee raises over time, because the only projects that opt in are those that have heavy impacts. But I still think we should move forward.

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Tanda: If somebody has a lot of record and it's five acres and they're developing 10,000 square feet of it with a horse corral, etc., would that owner be subject to this fee?

Schreiber: There are areas in the hills that are always going to be subject to the Habitat Plan. There are other areas in the lower hills that have less likelihood. There are other areas that are greenbelt that are not covered unless you run into a species issue.

Tanda: What if you're creating a vineyard?

Schreiber: You would only be required to participate if you need a grading permit.

Tanda: What is the endowment money used for?

Schreiber: To manage the land.

Tanda: What are the existing costs for developers as opposed to what they'll pay under the Habitat plan?

Schreiber: It's project specific. For example, Dick Oliver had a project where the corporation almost went bankrupt because it encountered CTS (California Tiger Salamander).

Rowe: It was a project in Gilroy that cost him several million dollars and during the process the market changed.

Tanda: The report concludes that this is a reasonable fee. Has the development community been involved in those discussions?

Rowe: Yes, but right now it is agreed that the current economic climate has had more of an impact than anything else on development.

Tanda: It looks like 40 percent of the cost of the plan is for land acquisition of 46,000 acres. Could Henry Coe park become part of that land?

Schreiber: Land that is existing open space is not eligible to become mitigation land. It has to be new land. Coe park, as existing open space area, wouldn't be eligible for mitigating impacts. The flip side is that just because agencies are buying land it doesn't mean that you're getting credit as mitigation under the Endangered Species Act. The agencies exist and permits are still always going to be required for Endangered Species.

McKay: I notice that there is an area shown for acquisition lands. How will that be treated in the meantime?

Schreiber: The acquisition would be "willing buyer – willing seller." But it would be very similar to other land acquisitions. It's meant to not be a one-sided negotiation.

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McKay: I'm very encouraged that the Corps of Engineers and the Water Board are involved and I think it's a good plan.

Moniz: I agree and I believe that it's going to be a definite asset.

Moniz called for a break at 8:02 and resumed at 8:07.

Rowe: One of the early tasks of the implementing agencies will be to update (zone fee and land cover) maps.

Mueller: When will the Morgan Hill Ranch be updated? It still shows up as agricultural land and it hasn't been that for years and years.

Schreiber: The HCP addresses impacts on species. LAFCO and Gilroy's ordinance for conversion addresses the loss of crop land. What we have found is that even if land is not farmed, it has more species value than if it has been farmed. In terms of the business park, it is the issue of providing certainty. There are going to be situations where species are encountered and part of the feedback has been to require certainty, so there won't be extra costs and delays.

Mueller: I don't disagree with that. My concern is that we're treating southeast quadrant land differently now. They're out but they can opt in. I'm saying that there are other lands that can be treated the same way.

Schreiber: It's an issue that management has talked about a number of times—how to treat the land within the city vs. rural areas.

Moniz: Can you define the pipeline project and how it is affected by the plan?

Rowe: Projects that have already received approvals are called pipeline projects and are not subject to the plan. To qualify they would need to have received at least one entitlement and would need to be issued a grading or building permit within one year of the adoption of the HCP. And there could not be any impacts to any of the HCP's covered species.

Tanda: I recall that an individual wanted to build a home in the east foothills but was unable to and he was referred to the HCP as his best course of action.

Rowe: Yes, that was Mr. Kruse.

Tanda: He happened to fall within a wetland.

Rowe: He has a pond on his property that is within a mile of another pond and there is the potential for the California Tiger Salamander to travel between the two, so he was required to do seasonal biological surveys in the springtime to prove otherwise.

Tanda: But under this process he would have something certain and some way to calculate the cost, correct? So what would his costs be?

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Rowe: His building area is away from the wetlands areas so it may be that he only has to pay the land cover fee. He would love to be able to do that because his allocations have already been extended five years.

Tanda: The last question I had was that there may be many properties that could be owned in fee simple or by conservation easement. Who will be the holding entity?

Schrieber: The assumption is that the land could be owned by the implementing entity itself, although in most cases it would probably be owned by Santa Clara County Parks, or Recreation, or the Open Space Authority. It could be owned by any organization that has a program to acquire open space land. There is no limitation on that. There is a requirement that the land in the conservation system have a conservation easement on it that sets out the uses and requirements and that one of the wildlife agencies is a third party beneficiary so that if somebody wants to transfer or sell it, then Fish and Wildlife would have the veto on it.

**Moniz closed Agenda Item 1 and recused himself from the floor at 8:25 pm.  
Vice-chair Benich took over as chairperson.**

### **PUBLIC HEARINGS:**

#### **2) SUBDIVISION, SD-11-05: DIANA- KB HOME:**

A request for approval of a 31-lot subdivision representing phase two of the 117 unit Sherimar Ranch project located on the south side of Diana Ave, east of Murphy Ave. and west of Ringel Dr. (APN's 728-19-001 & 002, 728-18-012).

Linder presented her staff report.

Benich opened the floor to public comment.

Nick Johnson, of 16747 Murphy Ave, a neighbor of the subject property, appeared: We, the neighbors, would like to ask for some contingency items. 1) That a compliance review be conducted on the noise and dust control measures and that an audit be performed to show that they're complying with the noise ordinance. 2) I would ask that KB Home be required to work with Santa Clara County Roads and Airports to fix Murphy Avenue. The traffic route for construction has been across Murphy Avenue. It's a two lane county road that has no striping. I would also like to ask that KB Home redirect their construction traffic from Condit to Diana, thus avoiding Nordstrom Park and the school children.

Talli Robinson of KB Home appeared with an update: The project is open for sale. The model homes are open. 18-19 permits have been pulled and are all under construction. Another 15 are being pulled soon.

Mueller: What are you doing to address the neighbors' complaints?

Robinson: Our superintendent and general superintendent met with Mr. Johnson at the site. We are looking at a polymer that will help with the dust. There was an incident where one of the subcontractors got too excited about having work. He has been reprimanded. Notice has been given that drivers should not be using Murphy. We don't believe they are doing that as a rule, but we've advised them that Murphy

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is not the route to take.

Mueller: That dust provision was in the Planned Development (PD) from when you started. So why haven't you been doing dust control up until now?

Robinson: We have. We have been using a water truck every day. But they are looking at a polymer additive as well.

Benich closed the floor to public comment.

Mueller: I would ask that we somehow make sure they're following the mitigation measures that were in the original PD agreement and the Negative Declaration. The other thing I was wondering is if there is a noise coordinator?

Benich reopened the floor to public comment.

Robinson: That would be our site superintendent, Jonathan Ingraham. He is the superintendent for all activity on the job.

Benich: Sunday construction is a definite no-no.

Robinson: Definitely, our superintendent was not on the job that day. It was the truss manufacturer that started work. I can't explain why he did it. We're very sorry that this happened and that the neighbors had to get involved.

Linder: In speaking to Mr. Johnson yesterday, I put him touch with Mr. Ingraham and apparently there was a meeting today. I also let him know that is our Building Department that will send inspectors out if there is dust, noise problems or dirt on the street. Those are things our building inspectors routinely deal with.

McKay: As far as the county road, do you know if that's one of the conditions in the agreement. Is that out of our jurisdiction?

Linder: It is. KB Home has recently completed offsite improvements to finish the path to Live Oak and they will be doing offsite in front of our city well. But the project conditions do not require the curb, gutter, sidewalk along the county portion of Murphy to be installed.

Mueller: Mr. Johnson thought there was a heavy vehicle permit required from county roads?

Linder: I have never heard of that. I have heard of it for wide load, but not for construction.

**COMMISSIONERS MUELLER AND MCKAY MOTIONED TO APPROVE THE MODIFIED RESOLUTION WITH THE INCLUSION OF OMITTED PAGE 7 OF STANDARD CONDITIONS.**

**THE MOTION PASSED (6-0-0-1) WITH THE FOLLOWING VOTE:  
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: MONIZ.**

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Chairman Moniz came back on the floor and moved on to Agenda Item 3.

**3) USE PERMIT,**  
**UP-11-04: JARVIS-**  
**AMEND:**

A request for approval of a conditional use permit to establish a college preparatory public charter school serving grades 6-12. The proposed school will be located in an existing 36,995 square foot office building at 610 Jarvis Drive in the Light Industrial Planned Unit Development (PUD) zoning district. The school's regular days of operation will be Monday through Friday from 7:30 a.m. to 6:00 p.m. Instructional times for students are approximately 7:45 a.m. to 3:00 p.m. The school will have approximately 250-500 students for the first two years of operation and 500-600 students at full size in year 3. The project is categorically exempt under Section 15301 of the State CEQA Guidelines.

Rowe presented his staff report.

Koepp-Baker: The school has not asked for an expansion of hours for after school activities. Understanding that this is not a traditional school; will they have activities in the evening that they should expand their hours?

Rowe: That was actually a question posed by Commissioner Mueller as well. Their answer was that they have no plans for activities beyond the operational times spelled out. They have no problem if the Commission wants to expand the hours. The only problem would be if a neighboring owner had an objection to the expanded hours.

Moniz opened the floor to public comment.

Jean Southland, the head of the Flex School for Silicon Valley, appeared: We are not a traditional school. We serve grades 6-12. The students spend a good portion of their day doing online curriculum. The learning model is best for students that are highly motivated and independent learners. We are at our maximum space at the temporary location and are looking forward to the new location. We had a lot of community interest in the school. We had a large waiting list. A new school is always an added value to a community.

Benich: How is this Flex Academy different from the Morgan Hill Charter School?

Southland: Our charter authorizer is Santa Clara County Office of Education. We are not associated with the Morgan Hill Unified School District (MHUSD). We do have a lot of collaboration with the Charter School. The Morgan Hill school charter is through the local School District.

Benich: I thought there were California minimum standards for land areas for schools. What do you do for recreation?

Southland: California Charter Schools are exempt from a lot of the California Education Code. Physical Education is not a requirement.

Benich: I thought a lot of colleges and universities require that for entrance.



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Southland: No, it is not a requirement for California college entrance.

Benich: Since this is a flex academy, there is no bus transportation?

Southland: Correct.

Benich: Are there any English language learners?

Southland: Yes, we are required under federal and state mandate to provide a program that supports their needs and we do that in pull-out groups with our staffing where they can get one-to-one support. A pull-out group would consist of 10-15 students, as opposed to a usual class size of 30 to 35.

Koepp-Baker: How many employees are there currently?

Southland: Currently there are eleven staff members on site.

Koepp-Baker: Do you foresee a time when you would like to see the availability of a longer day or weekends?

Southland: We'd like the opportunity to have a back to school night or exhibitions, so yes, that is desirable to have interactions with parents.

Mueller: Does the charter exemption include building requirements?

Southland: Yes.

Mueller: The physics and chemistry portion are not online?

Southland: We have to have wet labs to meet the UC A to G requirements. But we don't use any toxic chemicals. Any explosive activities are done virtually.

Mueller: So you won't have the traditional chemistry lab?

Southland: Correct.

Mueller: You do anticipate that some of your student will arrive via VTA Bus Route 16?

Southland: We currently have a handful of students that use public transportation.

Mueller: Route 16 comes down Cochrane?

Southland: Correct.

Tanda: How do teachers fit into the online learning program?

Southland: 60 percent of our middle school curriculum is offline. Students are going to breakout sessions, meeting with their teachers to get direct instruction

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and enrichment. High school is reversed. It's 60 percent online and 40 percent instruction. When teachers pull them out for instruction, it is very direct and individualized and is particularly helpful in the areas of mathematics and language arts. Rather than waiting for the kids to get to the end of the unit, there is data on the kids every day to see who is mastering the concepts and who is struggling.

Tanda: It sounds like this flex school academy is not a new concept.

Southland: There is a flex academy in San Francisco that has been functioning for a year and online education is becoming more and more common as a way of delivering instruction.

Tanda: So there's no track record for student performance and college admissions?

Southland: In California you have to be 100 percent onsite or 100 percent virtual. Virtual academies have a good track record. Students get into top level colleges. It is a very rigorous curriculum. Students are coming from other schools and finding it to be more difficult than they anticipated

Tanda: My experience with this type of thing is through a program at BYU. I coach a football team and several students have gone through it to try and raise their grades. With one exception, nobody passed. It's very tough. Perhaps what was missing was teachers or mentors to help them through because left to their own initiative, it's very tough to finish.

Southland: That's why we've created this learning model so they have core teachers who work with state credentials and meet the NCLB compliancy for State of California. They are highly qualified teachers. Both middle school and high school have academic coaches that are with them while they're in the large learning labs. They are not left to their own devices. These coaches are Para-professionals. My daughter has done a BYU course in math. She thought she was going to get ahead and found it would probably have been easier to take the course through the traditional instruction. Because it is so rigorous, we have built in supports.

Dommer: You've taken a school program and tried to fit it into an office building. Did you find any problems?

Southland: Right now we're just space constrained in our temporary site. But students are learning very well. They like to work on their own. They each have their own study carrels, much like the MH library. They have collaboration space, which is important for high school students' interaction. They also have traditional classroom space. I don't feel there is anything missing. It's probably more conducive to learning because students have an area to focus on their learning and not be distracted by what's going on around them.

Dommer: What about lunch and break times?

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Southland: The kids have an area to sit inside and eat. But kids like to get outside so there are outside areas as well. They are supervised at all times and that's one of the reasons we're looking to utilize the first floor to its full capacity.

Dommer: What does being outside mean?

Southland: They would have a restricted area. It would not be a free-for-all. There is a covered walkway and a few picnic tables. So the exterior space that is on the parking lot side of the building would be where students could congregate during their lunchtime.

Dommer: Is there any opportunity for a rooftop garden for them?

Southland: That would be wonderful but probably not at this time.

Moniz: And there would be supervision of the parking lot?

Southland: Yes, anytime students are inside or outside the building there is full supervision. It's called "line of sight." You need to be able to see the kids at all times.

McKay: Do the students have regular school hours, not flexible hours?

Southland: That's correct. They are required to be onsite all day or offsite all day. It's easier to manage an academic program if the students are there at the same time.

McKay: Would you like to formally request an extension of your hours?

Southland: I think that would be wise to do.

Moniz: Do colleges consider the grades equivalent to public schools?

Southland: Yes. Our courses have to be fully approved by USCs.

Moniz: Do you offer honors courses?

Southland: Yes, if you're an AP student you're at a 5 point scale. We also offer credit recovery.

Mueller: If you have students coming in using the bus route, where does your responsibility start? How do you handle those street crossings?

Southland: Most of our students that are taking the bus are high school students, so we're hoping they're fully aware of how to use crosswalks. Legally, our responsibility is when students are on school grounds. We will educate our students on safety and crossing streets.

Dan Amend with TBI, owner of the building, appeared: We acquired the building in 2007. The tenant, a mortgage broker, filed bankruptcy a few months

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later and we have been operating a vacant building since that time. We have recently come to terms on a lease agreement with Flex Academy. We are excited about the opportunity for them to come to town. We understand that we will probably have to do a traffic analysis as the schools moves up to full occupancy. We are also prepared to provide a more detailed site plan for pickup and drop off of students. We do care about impacts to neighboring businesses. We own Cochrane Business Ranch and Madrone Business Park in town. We've been a longtime corporate partner with the City of Morgan Hill. We take care of high quality buildings and bring high quality companies to town. We do not feel that we are diverging from that by bringing Flex Academy to the building on Jarvis. The Flex Academy will be an asset to the community.

Koepp-Baker: When will you be able to accommodate their move?

Amend: We had a meeting today with the Building Official to walk the building and understand any concerns that the permit process might bring. If things go well, we're hoping for mid-November.

Dommer: What's the square footage of the floor plan?

Amend: It's about 18,000 per floor. Somewhere between 36,000 and 37,000 for the building.

Jeff Cristina, property manager for 18440 and 18450 Technology Drive, appeared: I am here to oppose this project because having a school next to our property poses a lot of issues: Traffic is one of the biggest issues, especially on the north side of the property. My property is right next to the entrance on their property. That means I lose an entrance at least twice a day. Also, the strip between the properties doesn't have a fence. It just has trees.

Dommer: What use is your property?

Cristina: We're light industrial. We have a variety of tenants from HVAC to machine shop to digital components. This is partially an open campus so the children are going to be walking through my property. One of my tenants raised the concern about littering, vandalism and loitering. I have another property in Palo Alto. It has a gymnasium next to it and the number of issues that have occurred relative to noise, littering, etc is outstanding. Putting the wrong use into this property is going to make it difficult for the surrounding uses. Having 600 kids in that area is going to be a problem for all my tenants. I already have dumping issues on the site. Now I'm looking at liability issues for kids on my property. There are other issues that aren't being taken into consideration. A school sounds nice, but this building is just not the right use for a school.

Dommer: Is the area open between your building and the subject site?

Cristina: There is a driveway and trash enclosures on each side, so it's very open.

Koepp-Baker: Is that a common driveway?

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Cristina: Yes, the drivers park in the back so they use that driveway to exit, and that's right next to the school.

Mueller: You answered that it's a common driveway, but it's really just a parallel driveway between the properties, isn't it?

Rowe: There is a driveway parallel to the one on the subject property and that one is shared between the two buildings on that parcel. There is probably ten feet of landscaping between the two driveways.

Koepp-Baker: So you feel your access will be limited?

Cristina: For the north side, there would definitely be limited access. For the people loading and unloading in the back, if they don't have air conditioning and they leave their roll-up doors open, they'll be hearing the kids all throughout the day.

Tanda: I'm failing to understand the relationship between the properties. I only see one drive for the property in question. Is there a parallel driveway to the adjoining property?

Rowe: Yes, there is a driveway for access to the back of the adjacent buildings that runs parallel.

Tanda: Is there an ability to put up a fence between the two properties to inhibit people crossing over?

Rowe: Yes.

Tanda: And is there a fence now?

Rowe: There is no requirement to put up fencing between adjacent parcels unless the property owner desires it for security reasons.

Tanda: So a six foot chain link fence should pretty much reduce the probably of students going into the back of your buildings?

Cristina: That would reduce some of the problem, but there will still be noise issues. Right now we have a building that has been open for four years. We're rushing to get tenants in, while the school is rushing to get into this building. Rushing rarely brings good decisions. This is the wrong use and the wrong building.

Moniz: Are you concerned with noise coming off your property or noise coming onto your property?

Cristina: Both.

Tanda: It sounds like your users come into your buildings at the same time as

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the students arrive on campus?

Cristina: The normal business hours are from about 6:30 am to 7:00 pm.

Moniz: So you'll have the morning when there's a lot of congestion in the area. But at 3:00 p.m. I don't see the congestion because your users will be coming in and out throughout the day and then crews won't arrive until most of the kids are gone.

Cristina: I believe it will be an issue in the afternoon, although not as drastic as the morning.

Mueller: This is a question for staff, but I'm not sure the trip generation here is any higher than what it would be for a fully occupied 36,000 square foot office building, given the fact that there are 25 faculty members and a couple of grades that can drive.

Rowe: You could also look at reversing the queuing so that the action would be coming in off the driveway to the east.

Carol Dunn, owner of the building at 700 Jarvis Drive, appeared: We have tractor-trailer trucks that deliver our product. We have UPS trucks. There is a lot of traffic on Jarvis. That is a dangerous curve. People are coming in and out from the hotel. People walk across the street there. It is a dangerous location for school children to be. They don't belong in an industrial park. That's why we have our building there. We are trying to sell our building. Now you're going to be putting a restriction on us because you can't have someone coming in using chemicals in a building that borders a school. That restricts who I can sell my building to. We're concerned about vandalism, graffiti, litter, keeping the kids off our property. We're trying to run a business. We don't expect to be dealing with children.

Moniz: Is there a restriction on uses for buildings next to schools?

Rowe: There are some regulations that would apply when you're within a prescribed distance of an educational use. So that would be a possibility for a different user of the building in the future.

Mueller: Are the regulations prohibitive, or just permits that require a process?

Rowe: As I understand it, they're just some permit requirements that deal with uses like emergency generators, diesel power, and particulate matter emissions—things of that nature.

Koepp-Baker: But that wouldn't be any different than requirements for those types of things next to any building, would it?

Rowe: A school is a "sensitive receptor."

Koepp-Baker: What is the nature of your business?

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Dunn: We are a fastener distributor—nuts and bolts.

Koepp-Baker: Do you manufacture?

Dunn: No, we just distribute. But we have trucks coming in and going out all day long. A school would make it very difficult to run a business.

Moniz: Were you in business when the building was first occupied by the mortgage company.

Dunn: We were there before the mortgage company?

Moniz: Were you doing business when they were doing business?

Dunn: Yes.

Moniz: How were the traffic patterns?

Dunn: They weren't doing very much business. They had a staff of adults.

Moniz: Was traffic in the area problematic when it wasn't an educational facility? Were there instances of problems?

Dunn: We do have tractor-trailer trucks from Young's Market that park their trailers everywhere. There are also construction people that stay at the hotel and park their vehicles on the street. Even though the streets are wide, it is a problem on a curve.

Brad Krouskup of Toeniskoetter Development appeared: We have been in the area since 1987. In the spring Valley Christian approached us to occupy one of our buildings. At the time, we approached Flextronics, the adjoining business that occupies a 155,000 square foot manufacturing facility and is a manufacturer worldwide. We went to Flextronics first because we wanted to make sure we didn't undermine their use by having a school next door. One of the reasons Valley Christian liked our site was because we had a 60,000 square foot building and we had three acres adjoining it for outside recreation use. It was a much more traditional use than Silicon Valley Flex Academy, which is more in line with an office use than a school use. We went to Flextronics but we also had to consider what kind of impact the school might have on the other 35,000 acres in the park for attracting future businesses. Without question, the input we got from the commercial brokerage community and from other businesses and Flextronics was that they welcomed the use. Most businesses look at high-end education as one of the challenges we have in this area and to have an opportunity to bring Silicon Valley Flex Academy is another educational opportunity for Morgan Hill and for the community. This building is a really good fit for this use. If it were a traditional school with kids needing ball fields, I could see some concern. But not when you're bringing in what is akin to an office use. I know that there is a kids' gymnastics studio in the area. This can work as long as it's operated correctly. I believe the Flex Academy has a great

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operating history and will be a great asset. If they were coming to Madrone Business Park, we would welcome them.

Tanda: What happened with Valley Christian?

Krouskup: That was in the springtime. They're still very interested in starting a school down here but in mid-summer they had a big surprise when their committed enrollment fell off by about 15 percent due to the economy. That was the difference in moving forward with an expansion plan. Hopefully, they'll come back but it will be in another school year.

Rich Cristina, owner of the adjacent buildings on Technology Drive, appeared: The key to this thing is that right now is a very tough time to bring in tenants. We have anywhere from 1,500 to 6,000 square foot blocks available. We have a lot of vacancies. Our existing tenants have already told us they don't like the idea of a school next to us. I invested in an industrial business park and that will hurt our ability to bring in other tenants. When it hurts your tenants, it hurts your value. I don't believe it's fair to put this on us. I understand Mr. Krouskup's need for tenants, but I need tenants also. I would not have invested in this building if it had been next to a school.

Mueller: There have been statements made about students running around at various times during the day. I believe that would be for a traditional school, and not what you're proposing.

Southland: Exactly. We're a middle school and high school, not an elementary school where there would be a need for traditional recess activities. If you're familiar with high school students, they don't move around a lot during their breaks. They like to stand and socialize. We have a very controlled campus. San Francisco Flex Academy is on Post Street. They are surrounded by very high-end businesses. They have an established policy that prevents kids from loitering around the building. They are required to come inside. This is a small school environment that is much easier to manage. The Charter School of Morgan Hill had about 600 students. They were well supervised at all times. There is a lot of space in the walkways, so there should be no reason for kids to be milling around in the parking area.

Mueller: Industrial buildings with roll-up doors tend to have very loud noises. How is that going to impact what's going on?

Southland: It shouldn't impact the learning of our students at all.

Mueller: Would your learning environment be any more susceptible than an office environment?

Southland: No, we're probably in a noisier location where we're currently located.

Koepp-Baker: Would you have a problem with a fence between you and your neighbors?



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Southland: I would not have a problem with a fence.

Moniz: I agree that that's a very dangerous corner. How do you regulate students and staff from parking on the curb?

Southland: Student parking is permit only. And there should be plenty of parking for staff. Currently, we've given very explicit instructions to students, families and staff on where they're allowed to park. If the rules aren't followed, then there would be specific conversations held. There would be no parking allowed on the curb.

Mueller: If we were to add a condition to have a fence put up between your building and the two industrial buildings, how would you feel?

Amend: There is also an elevation change with heavy shrubbery to the west. As you stand in the parking lot, it doesn't feel like you're right next to Mr. Cristina's building. If a fence is the only thing preventing this going forward, I would say yes to that but I would want to share the cost with my neighbor. Also, could you confirm that the Champions Academy is in the building next door?

Dunn: It is in my building, I can tell you that.

Amend: [Directed to Dunn] So you currently have a use with children on site.

Dunn: Yes I do.

Jeff Cristina: You talked about a lot of noise. Can you tell us about the kind of equipment in your light industrial building? What is the decibel level?

Cristina: I do not know the decibel level, but one of the HVAC guys builds and refurbishes the units in his office. The people that build the circuit chips have extremely loud machinery. With the garage door down it is still heard very easily outside.

Don Dunn, co-owner of the property to the south, appeared: In the CC&Rs of the industrial community, fences are specifically prohibited. Fences aren't allowed. We lease out about one-third of our property to a gym. There is a one mile path in front of our building. There are kids forever running around there. We only have a small amount, but with 500 kids it will be very unmanageable. There was a church that also applied. We were informed that any building within 1,000 feet of a church or school could not have chemicals. We won't be able to sell to a tenant who uses chemicals. It will be a tremendous hardship.

Tanda: How many youths are at your facility?

Don Dunn: Around 30 to 35 every day.

Tanda: And they occupy about one-third of your building?

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Don Dunn: I believe so.

J. Cristina: We actually do have someone that uses chemicals. They build monitors and use a variety of chemicals.

Amend: The regulation pertains to an intensification of air discharge. It is not any chemical usage. It is only if it is a new use or an intensification of the use. Any existing usage would not require anything. And it's not prohibitive. It's just an additional level of notification.

Moniz: So if someone came in that fit this category, they would have to provide an expanded public notice but they wouldn't be precluded from coming in?

Rowe: That is correct.

Moniz closed the floor to public comment.

McKay: Mr. Rowe answered the question about notification on chemicals. The next concern is traffic and noise emanating from the adjacent buildings directed towards the school, which the school is not concerned about.

Dommer: Regarding the history of the property, what is allowed in that industrial park? Was educational allowed initially?

Rowe: The business park indicates Research Development/Light Manufacturing but it makes reference to all uses which are permitted within the Light Industrial (ML) Zoning District. If you go to the permitted and conditional uses in the ML district, it says uses of an educational nature may be allowed subject to approval of a conditional use permit.

Dommer: So it doesn't require a General Plan amendment?

Rowe: No.

Dommer: I do have a concern about the breaks. Where do the students go? Keeping them inside just doesn't seem possible all the time and their mixing area outside seem unresolved. I would like to see a decent area outside for them to be. If there isn't a good place, they will tend to migrate. Saying that every child will be monitored would require a lot of monitors for 600 students. At this point I have mixed feelings.

Tanda: That is my biggest concern too?

Moniz asked for Southland to return to the podium.

Southland: There is a covered walkway all along the parking lot side of the building so there is a large area for kids to congregate.

Dommer: How wide is that sidewalk?

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Amend: its 20+ feet wide.

Dommer: Would you be able to move your handicapped parking and expand your outside milling space and still meet ADA requirements?

Amend: Possibly.

Tanda: Do you provide food for sale?

Southland: The middle school and the high school have separate lunch breaks. Revolution Foods, a local provider, provides our hot lunch. It's brought in the morning and kept in warming ovens.

Tanda: Will this be a closed campus?

Southland: The middle school is a closed campus. No students are allowed off campus. Our high school students are allowed off campus if they meet certain requirements. They have to be in good academic standing and have no behavior issues. It is a rewards system that they have to gain access to off-campus.

Tanda: How many students will be in high school? If there is a CC&R that prohibits a fence, that would be a concern. Is there a way to verify that?

Rowe: There is at least one exception. Young's Market has a fence along the sides and rear of their property. It's actually security fencing, so there are some other instances where fencing has been put in for security reasons.

Tanda: One could make the argument that a fence would be good for security. I have tremendous empathy for the owner of the building to have not had a tenant for four years. I would hate it to go another four years. I would be opposed to a school being there, if it were a traditional school but what you've described to me is almost more like a business. The parents will decide if that's the environment they want. On another note, people generally don't want schools near their residences, but that's where they're usually located and things generally work. My inclination would be to support the project.

Mueller: You say you have a 60:40 middle school to high school ratio. How will that be in five years?

Southland: Based on community input, there is definitely a high level of interest for kids going from elementary into that middle school environment. So I would imagine that we would support that. I would eventually like to see a more balanced split.

Mueller: Would you expect the students to stay with you for all six years?

Southland: Yes.

Mueller: If this was a 36,000 square foot office building, what would be the traffic compared to what this school will have.

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Rowe: I would have to look at the trip generation. We did an analysis and there would be more traffic generated than for comparable office buildings.

Mueller: But there could be mitigation?

Rowe: Yes, right now the mitigation would be to cap enrollment at 375 students, until a traffic analysis is done.

Moniz: When would that occur?

Rowe: Fairly soon.

Koepp-Baker: What is the ADA parking on that site?

Rowe: There are five spaces.

Koepp-Baker: It seems if we could mitigate the outdoor congregating area by keeping middle school and high school lunches at separate times and we could make headway on separation of the properties, then I would think this is do-able. This is more like an online college environment and I have no problem with that.

Moniz: Is this the best, most efficient traffic approach to enter the school?

Rowe: The plan that they show for queuing vehicles is one proposal. But the condition we placed in the CUP is for them to develop a drop off and pick up that meets approval with the Community Development Agency. That would have to take in all the concerns that are noted before the Certificate of Occupancy would be awarded.

Dommer: Is parking allowed on this curve?

Rowe: The street is wide enough, but you've seen testimony that the school will not allow parking on the street.

Dommer: I'm not talking about the school in particular. Is parking allowed in general on the curve?

Creer: I believe it is.

Dommer: I believe that they will soon have cars stacking in the adjacent driveway. If you had a two-sided building drop off, you'd be able to stack another 12. Because I believe they're right, there is going to be a problem when cars are blocking their driveway.

Benich: After listening to all of this, I have to ask what is in the best interest of the community. I hear the property owners and I think for me that what really does it is that this is not a traditional school. This is more like an office. This is a higher caliber student attending the Flex Academy and there won't be the same amount of problems as those for a general population high school. With respect

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to the noise, I don't think this is a big deal. There was already a business operating there. This is a different model and we should give it a chance. I don't see a need for a fence. And this is by all means better than their current location. So I'm in favor of it.

Moniz: What would be the life of the permit?

Rowe: The permit runs for an indefinite period, subject to an annual review. And it could be called before the commission at any time if there are conditions that need to be modified.

Moniz: So hypothetically, they could open in November and then have immediate problems. What happens then?

Rowe: You could incorporate a six month review to report back to the Commission.

Mueller: We have a couple of CUPs that have reporting requirements right now.

**COMMISSIONERS MUELLER AND BENICH MOTIONED TO APPROVE THE CONDITIONAL USE PERMIT WITH A REVIEW TO BE PERFORMED SIX MONTHS AFTER OPENING OF THE SCHOOL AND ALSO EXPAND THE HOURS OF OPERATION TO 9:00 PM ON WEEKDAYS AND ALLOW FOR OCCASIONAL SATURDAY EVENTS**

Tanda: The motion did not address the traffic situation. I think we would want to include in the review a chance for neighboring owners to address the situation.

Mueller: Rowe says the trip count is a little higher but that's if 1 out of every 4 high school students brings a car. I'm not sure this model will turn out that way. And in terms of the noise, I'm not convinced this use is any more sensitive to the external noise that's being generated than an office use would be.

Tanda: I would like an analysis of the traffic impact on the public street.

Mueller: A traffic analysis is going to be required to get to full volume included and that's in the Resolution, so I think the motion can stay the way it is, unless we say something about modifying the congregating area on the entrance side of the building.

**THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:  
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

### ANNOUNCEMENTS /COMMISSIONER IDENTIFIED ISSUES

One topic coming back for consideration is the BMR reduction/waiver language. That will be at the next meeting. We're also about to embark on the RDCS competition. We'll be accepting applications starting Thursday. There are some issues that we want to get direction on before we evaluate each of the projects.

### CITY COUNCIL REPORTS

None.

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**ADJOURNMENT**      Noting that there was no further business for the Planning Commission at this meeting, Chair Moniz adjourned the meeting at 10:15 p.m.

**MINUTES RECORDED AND TRANSCRIBED BY:**

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**ELIZABETH BASSETT, Development Services Technician**

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